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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LSC/2014/0660**
Property	:	**30 Goldsworthy Gardens and 15 Eugenia Road, Silwood Estate, London SE16 2TB**
Applicants	:	**Various leaseholders, as listed in Appendix 1**
Representatives	:	**Mr S Dooley and Ms S Balcerzak, Client Services Managers at Chainbow Ltd**
Respondent	:	**London & Quadrant Housing Trust**
Representatives	:	**Ms S Hughes, Service Charge Team Leader, and Ms J Grant in the Respondent's Service Charge Team**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge P Korn** **Mr SA Manson FRICS**
Date and venue of hearing	:	**11th May 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**12th May 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the reserve fund contributions demanded in respect of the service charge years 2009/10, 2010/11, 2011/12, 2012/13, 2013/14 and 2014/15 are payable in full.]

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of reserve fund contributions payable by the Applicant in respect of the service charge years 2009/10 to 2014/15 inclusive.

2. The original application covered a wider range of service charge issues, but prior to the hearing Chainbow Ltd wrote to the tribunal stating that the only issue now being pursued was the reasonableness of the level of contributions towards the reserve fund.

3. The relevant legal provisions are set out in Appendix 2 to this decision.

The hearing

4. The Applicants were represented at the hearing by Mr S Dooley and Ms S Balcerzak, of Chainbow Ltd, property management advisers. The Respondent was represented by members of its in-house service charge team, Ms S Hughes and Ms J Grant.

The background

5. The Property comprises two residential blocks of flats, one containing 15 flats and the other containing 16 flats. There are therefore 31 flats in total and the Applicants are the leaseholders of 16 of those flats. The Property forms part of an estate known as Silwood Estate and was built circa 2008.

6. The tribunal has not inspected the Property as an inspection was not considered necessary and neither party requested an inspection.

7. The Applicants each hold a long lease of their flat. Each lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. It was common ground between the parties that each lease contains provision allowing the landlord to require the tenant to contribute towards a reserve fund.

Applicants' case

8. At the hearing Mr Dooley referred the tribunal to the Report on the Reasonableness of the current reserve fund contributions prepared by Aston Rose on behalf of the Respondent, a copy of which was in the hearing bundle. Mr Dooley took the tribunal through the various heads of cost included in Aston Rose's report.

9. As regards the amount calculated by Aston Rose as being a reasonable reserve fund contribution in respect of the roof, Mr Dooley said that this figure assumed a full replacement and that this was not a reasonable assumption to make. This contention – that it assumes a full replacement – was based on a passage in the Respondent's written statement of case in which it states *"L&Q therefore believes it is managing the sinking fund responsibly by budgeting to replace a product in line with industry or manufacturers expectations"*. Mr Dooley felt that £30,000 would be a more reasonable amount to budget for than £47,000, although he accepted that he did not have a specific basis for this alternative figure.

10. As regards the amount allocated towards replacement of the rainwater systems, Mr Dooley said that no full replacement would ever be required and that regular maintenance could and should be covered by the general service charge.

11. Regarding the cladding/render, in his view there should not be a separate amount allocated to this as the category entitled "external decorations" could include this. Also, the suggested 50 year cycle for cladding/render suggested that after 50 years the cladding/render would be replaced regardless of improvements achieved by 5 yearly decorations.

12. Regarding windows/doors, the glass within each flat's windows formed part of the demise and therefore should not be included in these figures. Specifically as regards the doors, it was unreasonable to assume a need for replacement of all doors after 25 years.

13. The figures for external and internal decorations assumed a 5 year cycle but the Property was now 7 years old and no external or internal decorations had been carried out using money from the reserve fund. In his view a 10 year cycle would be more appropriate in each case.

14. Regarding garden maintenance, in his view there was nothing to replace. The garden was almost entirely paved and ordinary regular maintenance was sufficient.

15. Regarding fencing, the fencing was metal and therefore it was unnecessary to provide for full replacement. Similarly, in relation to

external lighting, internal lighting, internal sockets and the TV system, there was nothing complex about the lighting system or the sockets or the TV system, and any expenditure should form part of the ordinary service charge as and when necessary.

16. Regarding floor tiles, he accepted that this should be a reserve fund item but felt that a 20 year cycle would be more appropriate.

17. Regarding the door entry system, a repair had been needed but it was unreasonable to assume that the whole system would need replacing at once. It was not a sophisticated system and it was highly unlikely that the entirety of the cabling would need replacing.

18. Regarding fire protection, again he felt that this should not be in the reserve fund and that this was a maintenance issue to be tackled on an ongoing basis when necessary.

19. As a general point Mr Dooley said that the reserve fund contributions were a very large percentage of the total service charge bill year on year and this was unusual and unreasonable. The Property did not have exceptional maintenance needs. If exceptional needs were to arise in the future then contributions could be increased at that point.

Respondent's case

20. In response to a question from the tribunal Ms Grant confirmed that none of the money in the reserve fund had yet been spent and that therefore the balance stood at about £260,000.

21. Ms Grant said that the Respondent considered it reasonable to provide for replacement of items where the RICS recommended providing for replacement. Also, long-term planning was important so that the Respondent did not have the problem of not being able to obtain matching parts. She accepted that the door entry system was currently quite basic, but a more sophisticated system might be needed in the future.

22. Ms Grant made the point that only just over half of leaseholders had joined this application, which indicated that the others are not unhappy. She also said that in her experience it was not at all unusual for reserve fund contributions to make up this proportion of the total service charge. She added that the Respondent might be prepared to adjust contributions going forward if considered appropriate but that it was not prepared to pay back any part of the contributions made to date.

Tribunal's analysis

23. We note that the Respondent is relying on the report prepared by Aston Rose. Aston Rose is a firm of chartered surveyors and the report sets out the qualifications and experience of the authors of the report. On the face of it, the authors of the report are suitably qualified to provide an expert report on the matters with which the report deals, and the Applicants have not challenged their qualification to do so.

24. The authors of the report state that the purpose of the report is to be factual, honest and balanced and that their recommendations have not been influenced by the Respondent. Again, these points have not been challenged or questioned by the Applicants. The report is dated 31st March 2014.

25. In our view, the fundamental difficulty facing the Applicants and Chainbow Ltd is that they have not produced any expert evidence to counter the report produced by Aston Rose. In written submissions and at the hearing the Applicants have made a series of assertions, but there is no expert analysis to back up those assertions.

26. In particular the Applicants place heavy reliance on the proposition that Aston Rose's report assumes full replacement of all items listed and that it would not necessarily be reasonable to replace all of these items. However, this is not what the report actually states. The report gives a "Cost to Repair or Replace", and therefore a more reasonable working assumption is that it is based on whichever of repair or replacement is the more economically prudent, given that Aston Rose are experts. Mr Dooley referred us to the passage in the Respondent's statement of case which states that *"L&Q therefore believes it is managing the sinking fund responsibly by budgeting to replace a product in line with industry or manufacturers expectations"*, but we are not persuaded that this negates a plain statement in the report itself, nor that it was intended as a bald statement that the reserve fund contributions are calculated on the assumption that every item listed will need to be replaced within the stated life expectancy period.

27. Mr Dooley suggested that the figure of £47,000 estimated by Aston Rose in relation to roof repair or replacement should be reduced to £30,000, but he accepted at the hearing that he did not have any specific basis for arriving at this figure, and therefore we are simply not in a position to prefer his analysis over that contained in Aston Rose's expert report. Had the Applicants provided their own expert report whose reasoned conclusions differed materially from those of Aston Rose then we might in those circumstances have had a basis for preferring the Applicants' evidence.

28. Mr Dooley said that the figure for windows/doors should be reduced because some of the windows form part of individual demises.

However, there is nothing in Aston Rose's figures or calculations to indicate that they have made an incorrect assumption in this regard, and therefore it appears that Mr Dooley is merely guessing that they have erred in this regard.

29. As regards the question of whether any categories of cost should not form part of the reserve fund, we note Mr Dooley's observations. From a purely common-sense perspective we understand why he has made those observations and we accept that these are perfectly proper observations to make. However, in our view, ultimately the problem for the Applicants is that Aston Rose's analysis is based on the BCIS publication entitled "Life expectancy of Building Components". With respect, understandable though Mr Dooley's comments are they cannot be accorded as much weight as the conclusions of an expert report based on industry-approved guidelines.

30. As regards the general point as to whether the reserve fund contributions are an unusually high proportion of the total service charge, the parties have offered conflicting views. In our experience it is not usual for reserve fund contributions to make up such a high proportion of the total service charge, but this does not in and of itself render the reserve fund contributions unreasonably high as each situation is different. Had there been compelling expert (or other) evidence challenging Aston Rose's conclusions then the relationship between the amount of the reserve fund and the amount of the general service charge might have assumed more importance, but in the absence of such alternative evidence we do not consider that this is a legitimate basis on which to reduce the reserve fund contributions.

31. We also note that Aston Rose's report is dated 31st March 2014. Had it been prepared in, say, 2009 there might well have been a basis for our questioning why the Respondent had not revisited the issue more recently. However, as it is a recent report this point does not apply. The conclusion of Aston Rose's report is that an appropriate annual reserve fund contribution per flat would be about £1,100. On that basis we are unable to conclude that £1,200 is an unreasonable amount.

32. In conclusion, therefore, on the basis of the evidence provided, the reserve fund contribution of £1,200 per annum per flat is reasonable and is properly payable in relation to each of the years in dispute. We would just add that given that the amount in the reserve fund currently stands at about £260,000 we consider that the Respondent should undertake a review at least every 3 years to ascertain whether the amount of the annual contribution remains reasonable.

Cost application under section 20C Landlord and Tenant Act 1985

33. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act. The Respondent indicated

at the hearing that no costs would be passed through the service charge. However, even though the Respondent has stated that it will not add these costs to the service charge it is appropriate nonetheless to deal with this application. Having heard the submissions from the parties and taking into account the determination above, the tribunal declines to order the Respondent not to pass any of its costs through the service charge.

Other cost applications

34. There were no other cost applications.

Name: Judge P Korn **Date:** 12th May 2015

APPENDIX 1

List of Applicants

15 Eugenia Road

Flat A	Robert Carter
Flat B	Chris Nicholson
Flat E	Leticia Sainz de la Maza
Flat F	Kevin Bishop and Wendy Bishop
Flat G	Alex Bates
Flat I	Arnell Rhee
Flat J	Kim Austin
Flat K	Alison Hui
Flat L	Riccardo Bertoldo and Claudio Di Sisto
Flat Q	Sean O'Kelly

30 Goldsworthy Gardens

Flat C	Marc Benson
Flat G	Maria Cimas
Flat H	Julija Ozolina
Flat I	Roman Zieba
Flat K	Heidi Barritt
Flat N	Floralba and Sebastien Collorafi

APPENDIX 2

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,

(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.